

Silicon Valley Jackson

(P)

ENDORSED

2007 AUG 23 P 2:44

KIM TALLE, CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA

BY: A. Ilas

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 SILICON VALLEY ANIMAL CONTROL AUTHORITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF SANTA CLARA

LEE JACKSON and KENNETH JACKSON,

Plaintiffs,

v.

SILICON VALLEY ANIMAL CONTROL
 AUTHORITY, CITY OF SANTA CLARA, CITY
 OF CAMPBELL, HUMANE SOCIETY SILICON
 VALLEY DOES 1 TO 20,

Defendants.

Case No.: 107CV079050

DEFENDANT SILICON VALLEY
 ANIMAL CONTROL
 AUTHORITY'S NOTICE OF
 DEMURRER TO PLAINTIFF'S
 COMPLAINT

Date: September 25, 2007
 Time: 9:00 a.m.
 Dept.: 22

BY FAX

Complaint filed: January 29, 2007

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN, that on September 25, 2007, at 9:00 a.m., in Department 22 of the above-entitled court, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY ("Defendant") will demur generally to the entire complaint (the "Complaint") filed in this action by plaintiffs LEE JACKSON and KENNETH JACKSON ("Plaintiffs"), on grounds that the Complaint fails to state facts sufficient to constitute any cause of action against Defendant. Defendant will request that this demurrer be sustained without leave to amend, and Plaintiff's complaint be dismissed with prejudice. Alternatively, Defendant will request that one or more causes of action against it be dismissed without prejudice.


This demurrer is brought pursuant to Code of Civil Procedure §§ 430.50(a) and 430.10(e), on grounds that Plaintiffs' Complaint fails to state any cause of action against Defendant. The causes of

1 action alleged against Defendant in Plaintiff's complaint are: first cause of action for general negligence;
2 third cause of action for negligent hiring; fourth cause of action negligent infliction of emotional
3 distress; fifth cause of action for assault and battery; sixth cause of action for intentional infliction of
4 emotional distress; seventh cause of action for conversion; and eighth cause of action for violation of
5 civil rights pursuant to 42 U.S.C. § 1983.

6 This motion is based upon this Notice, the Memorandum of Points and Authorities filed
7 herewith, the Request for Judicial Notice and all exhibits attached thereto filed herewith, all papers in
8 support of the Defendant's Motion to Strike filed concurrently herewith, and upon such oral and/or
9 documentary evidence as may be presented at the hearing on this motion.

10
11 Dated: August 23, 2007.

12 LOW, BALL & LYNCH

13
14 By 
15 MARK F. HAZELWOOD
16 DIRK D. LARSEN
17 Attorneys for Defendant
18 SILICON VALLEY ANIMAL CONTROL
19 AUTHORITY
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KIM TERRY, CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA
BY: A. Ilas
CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

LEE JACKSON and KENNETH JACKSON,
Plaintiffs,

v.

SILICON VALLEY ANIMAL CONTROL
AUTHORITY, CITY OF SANTA CLARA, CITY
OF CAMPBELL, HUMANE SOCIETY SILICON
VALLEY DOES 1 TO 20,

Defendants.

Case No.: 107CV079050

DEFENDANT SILICON VALLEY
ANIMAL CONTROL'S
DEMURRER TO PLAINTIFF'S
COMPLAINT

Date: September 25, 2007

Time: 9:00 a.m.

Dept.: 22

BY FAX

Complaint filed: January 29, 2007

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY ("Defendant") hereby
generally demurs to Plaintiff LEE JACKSON and KENNETH JACKSON's complaint in this action (the
"Complaint") as well as to the causes of action contained therein and specified below on the following
grounds:

I. GENERAL DEMURRER TO THE ENTIRE COMPLAINT

The Complaint fails to state facts sufficient to constitute any cause of action against Defendant.
(C.C.P. § 430.10(e).)

II. GENERAL DEMURRER TO FIRST CAUSE OF ACTION FOR GENERAL NEGLIGENCE

The Complaint fails to state facts sufficient to constitute a cause of action for general negligence
against Defendant. (C.C.P. §§ 430.10(a) and (e).)

1 III. GENERAL DEMURRER TO THIRD CAUSE OF ACTION FOR NEGLIGENT HIRING

2 The Complaint fails to state facts sufficient to constitute a cause of action for negligent hiring
3 against Defendant. (C.C.P. §§ 430.50(a) and 430.10(e).)

4 IV. GENERAL DEMURRER TO FOURTH CAUSE OF ACTION FOR NEGLIGENT
5 INFLECTION OF EMOTIONAL DISTRESS

6 The Complaint fails to state facts sufficient to constitute a cause of action for negligent infliction
7 of emotional distress against Defendant. (C.C.P. §§ 430.50(a) and 430.10(e).)

8 V. GENERAL DEMURRER TO FIFTH CAUSE OF ACTION FOR ASSAULT AND BATTERY

9 The Complaint fails to state facts sufficient to constitute a cause of action for assault and battery
10 against Defendant. (C.C.P. §§ 430.50(a) and 430.10(e).)

11 VI. GENERAL DEMURRER TO SIXTH CAUSE OF ACTION FOR INTENTIONAL
12 INFLECTION OF EMOTIONAL DISTRESS

13 The Complaint fails to state facts sufficient to constitute a cause of action for intentional
14 infliction of emotional distress against Defendant. (C.C.P. §§ 430.50(a) and 430.10(e).)

15 VII. GENERAL DEMURRER TO SEVENTH CAUSE OF ACTION FOR CONVERSION

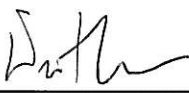
16 The Complaint fails to state facts sufficient to constitute a cause of action for conversion against
17 Defendant. (C.C.P. §§ 430.50(a) and 430.10(e).)

18 VIII. GENERAL DEMURRER TO EIGHTH CAUSE OF ACTION FOR VIOLATION OF CIVIL
19 RIGHTS PURSUANT TO 42 U.S.C. § 1983

20 The Complaint fails to state facts sufficient to constitute a cause of action for violation of civil
21 rights pursuant to 42 U.S.C. § 1983 against Defendant. (C.C.P. §§ 430.50(a) and 430.10(e).)

22
23 Dated: August 23, 2007.

24 LOW, BALL & LYNCH

25
26 By 
27 MARK F. HAZELWOOD
28 DIRK D. LARSEN
Attorneys for Defendant
SILICON VALLEY ANIMAL CONTROL
AUTHORITY

ENDORSED

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KIRI PACHE, CLERK OF THE SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA
BY: A. Ilas
JUL 23 2007

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9 SILICON VALLEY ANIMAL CONTROL AUTHORITY

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SANTA CLARA

13 LEE JACKSON and KENNETH JACKSON,
14 Plaintiffs,

15 v.

16 SILICON VALLEY ANIMAL CONTROL
17 AUTHORITY, CITY OF SANTA CLARA, CITY
18 OF CAMPBELL, HUMANE SOCIETY SILICON
19 VALLEY DOES 1 TO 20,

20 Defendants.

Case No.: 107CV079050

DEFENDANT SILICON VALLEY
ANIMAL CONTROL
AUTHORITY'S MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF DEMURRER TO
PLAINTIFFS' COMPLAINT

Date: September 25, 2007

Time: 9:00 a.m.

Dept.: 22

Complaint filed: January 29, 2007

21 I. INTRODUCTION AND RELIEF SOUGHT

BY FAX

22 This lawsuit arises out of allegations that defendants unlawfully entered plaintiff Lee Jackson and
23 Kenneth Jackson's ("Plaintiffs") motor home, seized Plaintiffs' pet animals, detained Plaintiffs and
24 battered plaintiff Lee Jackson on December 19, 2005. (Complaint.) Plaintiffs filed the complaint in this
25 action on January 29, 2007, alleging the following causes of action: (1) general negligence against the
26 Silicon Valley Animal Control Authority ("Defendant") and City of Santa Clara; (2) denial of due
27 process rights against the City of Campbell; (3) negligent hiring against the Silicon Valley Animal
28 Control Authority and City of Santa Clara; (4) negligent infliction of emotional distress against the
Silicon Valley Animal Control Authority and City of Santa Clara; (5) assault and battery against the
Silicon Valley Animal Control Authority and City of Santa Clara; (6) intentional infliction of emotional

1 distress against the Silicon Valley Animal Control Authority and City of Santa Clara; (7) conversion
 2 against the Silicon Valley Animal Control Authority and City of Santa Clara; (8) violation of federal civil
 3 rights (Fourth and Fourteenth Amendments to the U.S. Constitution) against the Silicon Valley Animal
 4 Control Authority and City of Santa Clara; and (9) conversion against the Humane Society of Silicon
 5 Valley. (Complaint.)

6 Pursuant to Code of Civil Procedure §§ 430.50(a) and 430.10(e), Defendant demurs generally to
 7 Plaintiffs' entire Complaint and all causes of action alleged against Defendant, specifically: first cause of
 8 action for general negligence; third cause of action for negligent hiring; fourth cause of action negligent
 9 infliction of emotional distress; fifth cause of action for assault and battery; sixth cause of action for
 10 intentional infliction of emotional distress; seventh cause of action for conversion; and eighth cause of
 11 action for violation of civil rights pursuant to 42 U.S.C. § 1983. Accordingly, the Defendant respectfully
 12 requests that its demurrer be sustained without leave to amend, and the Complaint be dismissed with
 13 prejudice as to Defendant. In the alternative, Defendant respectfully requests that the Court sustain its
 14 demurrer as to one or more causes of action alleged in the Complaint.

15 **II. PLEADING ALLEGATIONS**

16 Plaintiffs' Complaint correctly acknowledges that Defendant is a public entity. (Complaint at 2.)
 17 Plaintiffs' first, fourth, fifth, sixth, seventh and eighth causes of action against Defendant are all based
 18 on the following set of facts: on December 19, 2005,

19 [d]efendants unlawfully entered Plaintiffs' motorhome, unlawfully seized
 20 Plaintiffs [sic] pet animals, unlawfully detained Plaintiffs and assaulted
 21 and battered Plaintiff Lee Jackson, causing Plaintiffs severed [sic] mental,
 emotional and physical harm and depriving them of their property, pet
 animals.

22 (Complaint at 4, 7-12.)

23 Plaintiff's third cause of action for negligent hiring against Defendant contains the following
 24 allegations:

25 Defendants negligently hired, trained and supervised employees including
 26 A. Morris, Al Davis, and others not known known [sic] by name who
 27 participated in the events surrounding the unlawful seizure of Plaintiffs'
 pet animals on 12-19-05.

28 (Complaint at 6.)

1 **III. ARGUMENT**

2 **A. Applicable Law.**

3 Code of Civil Procedure § 430.10 provides, in pertinent part:

4 The party against whom a complaint or cross-complaint has been filed may object, by
demurrer . . . to the pleading on one or more of the following grounds:

5 (e) The pleading does not state facts sufficient to constitute a cause of action.
6

7 A demurrer for failure to state a cause of action is commonly referred to as a “general demurrer.”
8 (*Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group)*, p. 7-17, § 7:37.) A general demurrer
9 will lie if a defense to a cause of action appears on the face of the complaint. (*Id.* at 7-25, § 7:40.) A
10 demurrer to a complaint may be taken to the whole complaint or to any of the causes of action stated
11 therein. (C.C.P. § 430.50(a).)

12 A complaint must contain facts constituting a cause of action in ordinary and concise language.
13 (C.C.P. § 425.10(a)(1).) It must do so without the aid of conjectural facts that are not directly alleged.
14 (*Hawkins v. Oakland Title Ins. & Guar. Co.* (1958) 165 Cal.App.2d 116, 122.) The conclusions of the
15 pleader are disregarded. (*Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 329.) The
16 “facts” to be pleaded are those upon which liability depends, i.e., “the facts constituting the cause of
17 action.” (C.C.P. § 425.10(a)(1); *Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group)*, p.
18 6-31, §6:123.) These are commonly referred to as “ultimate facts.” (*Cal. Practice Guide: Civ. Proc.*
19 *Before Trial (The Rutter Group)*, p. 6-31, §6:123.) Failure to plead ultimate facts subjects the complaint
20 to a demurrer for failure to state facts constituting a cause of action. (C.C.P. § 430.10(e).)

21 **B. Plaintiffs’ State-Law Claims Fail to State Facts Sufficient to Constitute Any Cause** 22 **of Action Against Defendant, A Public Entity.**

23 Plaintiffs’ Complaint contains six apparently state-law causes of action against Defendant, which
24 the Complaint acknowledges is a public entity: first cause of action for general negligence; third cause of
25 action for negligent hiring; fourth cause of action for negligent infliction of emotional distress; fifth
26 cause of action for assault and battery; sixth cause of action for intentional infliction of emotional
27 distress; and seventh cause of action for conversion. (Complaint, 2, 4, 6-10.) For the reasons discussed
28 below, all of these claims fail to state facts sufficient to constitute a cause of action against this public-

entity Defendant.

**1 1 Because the Complaint Fails to Allege or Excuse Compliance with
Government Code §§ 900 et seq., It Fails to State Facts Sufficient to
Constitute a Cause of Action Against Defendant.**

Government Code § 911.2 provides that a “claim relating to a cause of action for death or for injury to person or to personal property ... shall be presented as provided in ... this chapter not later than six months after the accrual of the cause of action.” Under § 945.4, “no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented ... until a written claim therefor has been presented to the public entity and has been ... rejected[.]” Moreover, the California Supreme Court has held that “failure to allege facts demonstrating or excusing compliance with the claim presentation requirement subjects a claim against a public entity to a demurrer for failure to state a cause of action.” (*State v. Superior Court (Bodde)* (2004) 32 Cal.4th 1234, 1239.)

Plaintiffs’ Complaint acknowledges that Defendant is a public entity. (Complaint at 2.) However, the Complaint fails to allege or excuse compliance with Government Code §§ 900 et seq. (*See* Complaint.) Accordingly, the Complaint fails to state any state-law cause of action against Defendant and should thus be dismissed.

**2 2 Because the Complaint Fails to Allege a Statutory Basis for Liability on the
Part of Defendant, a Public Entity, It Fails to State Facts Sufficient to
Constitute a Cause of Action Against Defendant.**

There can be no be viable cause of action asserted against the Silicon Valley Animal Control Authority absent a statute establishing liability of the public entity for the complained actions. (*See* Gov. Code §§ 815, 815.2(b); Legis. Comm. Com. to §§ 815, 815.2(b); also see *Morris v. State of California* (1979) 89 Cal.App.3d 962, 964; *Datil v. City of Los Angeles* (1968) 263 Cal.App.2d 655, 660.) Government Code section 815 provides as follows: “Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person...”

In other words, there is no common law liability for the negligence or other acts of a public entity. This principle was fully explained in *Cochran v. Herzog* (1984) 155 Cal.App.3d 405, at page 409, where the court stated:

Government Code section 815, enacted in 1963, abolished all common law or judicially declared form of liability for public entities, except for such liability as may be required by the federal or state constitution. Thus, in the absence of some constitutional requirement, public entities may be liable *only* [emphasis in original] if a statute declares them to be liable. Moreover, . . . the immunity provisions of the California Tort Claims Act will generally prevail over any liabilities established by statute [citations omitted]. In short, sovereign immunity is the rule in California; government tort liability is limited to exceptions specifically set forth by statute.

The court further explained that “[t]o state a cause of action against a public entity, every fact material to the existence of its statutory duty must be pleaded with particularity [citations omitted]. The complaints were thus subject to demurrer for failure to state a claim on which relief may be granted.” (*Id.* at 410 n.2.)

A complaint against a government entity must also allege the particular statute(s) which establishes the duty alleged to have been breached. (*See Zuniga v. Housing Authority* (1995) 41 Cal.App.4th 82, 96 [disapproved on other grounds in *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1146].) Plaintiffs’ complaint is subject to demurrer because it fails to identify any statutory basis for liability on the part of Defendant.

Accordingly, Plaintiffs’ first, third, fourth, fifth, sixth and seventh claims against the Silicon Valley Animal Control Authority fail to state facts sufficient to constitute a cause of action and should thus be dismissed.

3 The Complaint Does Not State Facts Sufficient to Constitute Plaintiffs’ Fourth Cause of Action for Negligent Infliction of Emotional Distress.

The negligent causing of emotional distress is not an independent tort. (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588 [internal citation omitted].) Instead, emotional distress is a common additional element of damages, which may be given when the cause of action is otherwise established. (*See Long v. PKS, Inc.* (1993) 12 Cal.App.4th 1293, 1298 [internal citations omitted].) Plaintiffs’ fourth cause of action for negligent infliction of emotional distress thus fails to state facts sufficient to constitute a cause of action. Accordingly, a general demurrer lies to this claim.

///

C. A General Demurrer Lies to Plaintiffs' Eighth Cause of Action Pursuant to 42 U.S.C. § 1983 Because It Does Not Allege that the Claimed Injury Was Caused by Defendant's Official Custom or Policy.


Plaintiffs' eighth cause of action for violation of civil rights pursuant to 42 U.S.C. § 1983 fails to meet the pleading requirements of that section as it applies to municipalities and their subdivisions. (*See* 42 U.S.C. § 1983; *Monell v. Dep't. of Soc. Svcs. of City of New York* (1978) 436 U.S. 658, 690). *Monell* allows local governing bodies to be sued under § 1983 only where the alleged violation implements or executes a policy or custom. (*Id.*) A local governing body's liability under *Monell* may be premised on one of three theories: (1) that an employee was acting pursuant to an expressly adopted official policy; (2) that an employee was acting pursuant to a longstanding practice or custom; or (3) that an employee was acting as a "final policymaker." (*Lytle v. Carl* (9th Cir. 2004) 382 F.3d 978, 982.) Plaintiffs' Complaint fails to state any of these three theories as a basis for the liability of Defendant for an alleged violation of Plaintiffs' federal rights. Accordingly, the Complaint fails to allege facts sufficient to constitute this cause of action against the Silicon Valley Animal Control Authority, and a general demurrer lies.

IV. CONCLUSION

For the foregoing reasons, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY respectfully requests that the Court sustain its demurrer to Plaintiffs' first, third, fourth, fifth, sixth, seventh and eighth causes of action without leave to amend and, accordingly, to dismiss Plaintiffs' Complaint against Defendant with prejudice.

Dated: August 23, 2007.

LOW, BALL & LYNCH

By 
 MARK F. HAZELWOOD
 DIRK D. LARSEN
 Attorneys for Defendant
 SILICON VALLEY ANIMAL CONTROL
 AUTHORITY

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SILICON VALLEY ANIMAL CONTROL AUTHORITY

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Plaintiffs,

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VALLEY DOES 1 TO 20,

Defendants.

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DEFENDANT SILICON VALLEY
ANIMAL CONTROL
AUTHORITY'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF DEMURRER TO PLAINTIFF'S
COMPLAINT

Date: September 25, 2007

Time: 9:00 a.m.

Dept.: 22

BY FAX

Complaint filed: January 29, 2007

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Evidence Code §§ 452 and 453, and without admitting to the truth any of the allegations stated therein, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY respectfully requests that the Court take judicial notice of the genuineness of plaintiff LEE JACKSON and KENNETH JACKSON's complaint filed in this action on January 29, 2007. A true and correct copy of said document is attached hereto as Exhibit "1."

The court may further take judicial notice of any records of any court of the state. (Evidence Code § 452(d).) When a party requests that the court take judicial notice of such matters and gives the adverse party sufficient notice of the request to enable the adverse party to meet the request and furnishes the court with sufficient information to enable it to take judicial notice of the matter, judicial

1 notice is mandatory. (Evidence Code § 453.)
2

3 Dated: August 23, 2007.
4

LOW, BALL & LYNCH

5
6 By 

MARK F. HAZELWOOD

DIRK D. LARSEN

Attorneys for Defendant

SILICON VALLEY ANIMAL CONTROL
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